

(2017) 09 BOM CK 0152
In the Bombay High Court
Case No : 176 of 2017

Maharashtra State Electricity Distribution Company Limited - APPELLANT
Through President MSEDCL, Mumbai, & Ors.

Vs

Smt. Jamirshaha Jabbarshah, & Ors. RESPONDENT

Date of Decision : 21-09-2017

Acts Referred:

[Limitation Act, 1963](#), [Section 6](#), [Section 7](#), [Section 6\(1\)](#), [Article 72](#) - Legal disability - Disability of one of several persons - Legal disability

Citation : (2017) 09 BOM CK 0152

Hon'ble Judges : A.S. Chandurkar

Bench : SINGLE BENCH

Advocate : S. V. Purohit, U. J. Deshpande

Final Decision : Dismissed

Judgement

1. Admit. Heard finally with the consent of the learned Counsel for the parties.
2. The appellants are the original defendants who are aggrieved by the decree passed by the first appellate Court thereby directing the said defendants to pay an amount of Rs.2,00,000/to the respondents - plaintiffs herein by way of compensation.
3. It is the case of the respondent nos.1 to 4 that one Jabbarshaha was their father and husband of respondent no.5 herein. They had one more brother namely Shabbirsha. The family used to do agricultural work and they were residing at Akot. It is their case that on 9-6-1990 when their father and brother Shabbirsha had gone to the field of one Jaywantabai, a live wire touched the body of Shabbirsha due to which he fell down. Their father tried to remove the said wire with a wooden stick. Both of them suffered an electric shock resulting in their death. On that basis, their mother for herself and as their natural guardian filed suit seeking compensation of Rs.2,00,000/from the appellants -

original defendants. The defendants did not file any written statement. The plaintiffs examined plaintiff no.5 and a witness from the Electricity Inspector's Office. One witness was examined by the defendants. The trial Court held that the suit that was filed on 27-10-1994 was barred by limitation and hence dismissed the same. The first appellate Court after holding that the suit was filed within limitation found that the defendants were negligent in maintaining the electricity supply which resulted in the accidental deaths. The suit was accordingly decreed and compensation of Rs.2,00,000/with interest @6% per annum came to be awarded. Being aggrieved the present appeal has been filed.

4. The following substantial question of law arises for consideration:

"Whether the provisions of Sections 6 and 7 of the Limitation Act, 1963 extend the period of limitation for filing the suit seeking monetary compensation?"

5. Shri S. V. Purohit, learned Counsel for the appellants submitted that the trial Court had rightly held the suit to be barred by limitation. Though the suit was filed on 27-10-1994, it was actually registered on 21-11-2001 inasmuch as the plaintiffs had sought permission to sue as indigent person. According to him, the suit would have to be treated as being actually filed on 21-11-2001. It was then submitted that the first appellate Court committed an error in holding that by virtue of provisions of Sections 6 and 7 of the Limitation Act, 1963 (for short, the said Act) the suit was within limitation. According to him, the plaintiff Nos.3 to 5 were major when the suit was registered. These plaintiffs ought to have filed the suit within a period of one year as required by Article 72 of the said Act. As the incident in question had taken place on 9-6-1990, the suit was barred by limitation. He therefore submitted that no relief could have been granted to the plaintiffs. Without prejudice, it was submitted that the amount of compensation granted was on higher side. The learned Counsel however fairly pointed out that as per the decisions in *The Electricity Board, U.P. State vs. Sheo Nath Singh and anr* AIR 1976 Allahabad 118, *Sardar Vijaysingh Rao Ghorpade vs. Jeewan Lal Ram Das Jaiswal* AIR 1963 MP 100 and *Smt. Usha Rani Banerjee and others v. Premier Insurance Company Ltd. Madras and others* AIR 1983 Allahabad 27, the limitation would commence after the disability as contemplated by Section 6 of the said Act would come to an end.

6. Shri U. J. Deshpande, learned Counsel for the respondents supported the impugned judgment. According to him, the first appellate Court rightly held that in view of provisions of Sections 6 and 7 of the said Act, the period of limitation of one year stood extended. According to him, the plaintiff nos.1 and 2 were minors even when the suit was registered and therefore the appellate Court correctly applied the provisions of Sections 6 and 7 of the said Act for extending the period of limitation for entertaining the suit on merits. In that regard, he placed reliance on the decision in *Abha Yadav vs. Municipal Corporation of Delhi* 2003 ACJ 1620 and *State of Jammu and Kashmir vs. Mushtaq Ahmad Want* AIR 2009 J & K 56. It was then submitted that the amount of compensation as awarded though was on a lower side, the respondents had accepted the same

because of their financial condition. He submitted that the negligence of the appellants having been duly proved, they were liable to compensate the respondents.

7. I have heard the learned Counsel for the parties at length and I have perused the documents placed on record. The occurrence of the accident on 9-6-1990 and the resultant death of the father of plaintiff nos.1 to 4 and one of their brothers is not in dispute. There was no written statement filed on behalf of the original defendants. The plaintiffs had examined the plaintiff no.5 as well as a witness from the Electrical Inspector's Office and on the basis of that evidence, the trial Court as well as the appellate Court recorded a finding that the death of both the said persons was caused on account of the negligence of the appellants. This finding therefore does not require to be interfered.

8. Under the provisions of Article 72 of the said Act, the limitation for claiming compensation on account of doing or for omitting to do an act is a period of one year from the date the act or omission takes place. The accident in question having occurred on 9-6-1990, the suit was liable to be filed within a period of one year from said date. It is however not in dispute that four of the plaintiffs were minors when the suit was filed on 27-10-1994. Under Section 6 (1) of the said Act, if a plaintiff is a minor at the time when the suit is sought to be instituted, he is permitted to institute such suit within the same period as prescribed after the disability as regards minority has ceased. Under Section 7 of the said Act where several persons are jointly entitled to institute a suit and one of them is under disability due to which the suit cannot be instituted, unless a discharge can be given without the concurrence of such person, time would not run against all the said persons. From the aforesaid provisions, it is clear that firstly if a plaintiff is a minor he is entitled to the benefit of the period till he attains the majority. Similarly, where a proceeding can be jointly instituted, even if one of the plaintiffs is a minor and discharge cannot be given by the other plaintiffs the time would not run against all of them.

9. The aforesaid provisions have been considered in detail in the judgment of the Allahabad High Court in Usha Rani Bannerjee and others (supra). In para 9 of the said decision, it has been observed thus:

"9.....In case of fatal accidents the interest of legal representatives and heirs is distinct. Each one of them is entitled to claim separate amount of damages. One person can give discharge in respect of his own right but he cannot give discharge in respect of the right of other claimant. Since both the children were minors they were incapable of giving their consent to their mother and she could not without their consent give discharge. Smt. Usha Rani Banerjee could not give a valid and legal discharge on behalf of two minor children who were entitled to the damages in their own right. We are, therefore, of the opinion that the period of limitation could not run against the minors. Admittedly they attained majority much later....."

The facts of the present case are somewhat of a similar nature and the aforesaid observations assist the case of the respondents.

10. In *Electricity Board, U.P. State* (supra), the aforesaid provisions were considered and in para 11, it has been observed thus:

"11. The term "persons jointly entitled to institute a suit" conjoint and not persons whose substantive rights are several. It is immaterial that persons who have distinct several substantive rights arising out of the same cause of action may join together instituting a suit under Order I, Rule 1 of the Code of Civil Procedure. Similarly, it would also not make any difference that in view of the provisions of S. 2 of the Indian Fatal Accidents Act only one suit may be filed. For recovery of compensation a suit can no doubt be filed in a representative capacity for the benefit of all the persons who are entitled to compensation, but they would not be covered by the term "persons jointly entitled to institute a suit" under Section 7 of the Limitation Act, if the substantive right of those persons is not joint but several. Under the Indian Fatal Accidents Act, the substantive right of the wife, husband, parent and child, if any, of the deceased persons is not joint. Each of them has a distinct several right, and the Court while passing a decree in a suit filed under The Indian Fatal accidents Act has to apportion the amount payable to each of those persons. Such persons are therefore not "jointly entitled to sue" within the meaning of Section 7 of the Limitation Act. Consequently, the question as to whether one of them can give a valid discharge in such a case would not arise."

The decisions in *Abha Yadav* and *Mustaq Ahmad Want* (supra) are also on similar lines.

11. Thus, from the aforesaid it can be conclusively held that as the plaintiff nos.1 and 2 were under a legal disability as they were minors when the period of limitation of one year after the incident in question expired, they were entitled to file the suit within a period of one year after attaining the age of majority. The suit thus having been filed by their mother who could not give them valid discharge as contemplated by Section 7 of the said Act was within limitation. The first appellate Court rightly considered the aforesaid provisions while holding in favour of the plaintiffs. The substantial question of law is accordingly answered by holding that the plaintiffs are entitled for the benefit of provisions of Sections 6 and 7 of the said Act for extending the period of limitation.

12. Though it was urged that the amount of compensation granted is on higher side, in the facts of the present case, I do not find that this amount deserves to be reduced. As a result of the aforesaid discussion, the judgment of the appellate Court is liable to be confirmed. The second appeal is therefore dismissed with no order as to costs.